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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,170	03/03/2004	Eric Inselberg	0128-1 CON CIP2	3702

7590 01/13/2005

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EXAMINER

GELIN, JEAN ALLAND

ART UNIT	PAPER NUMBER
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2681

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/792,170

Applicant(s)

INSELBERG, ERIC

Examiner

Jean A Gelin

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 3 objected to because of the following informalities: the phrase "a method as recited by claim 3" should be --a method as recited by claim 2--. Appropriate correction is required.

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 67-70 been renumbered 70-73.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 8, 16, 17, 19-21, 26, 27, 29-37, 39-44, 46-52, 54, 57-65, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Junkin (U.S. 6,193,610) in view of Ruybal (US 5,801,754).

Regarding claims 1, 2, and 46-50, Junkin discloses a method for interactive audience participation at an event attended by a plurality of spectators each spectator

Art Unit: 2681

employing a wireless interactive device having capability to communicate (col. 3, lines 54-64) comprising the steps of: providing a wireless communication system adapted to transmit and receive messages with said interactive device (40); disseminating at least one promotional message (fig. 4, the ticker tape 50) to said spectators through said user output interface of said interactive device (col. 8, lines 6-15; col. 8, lines 49-52; col. 9, lines 37-47 and 59-62); querying the spectators, wherein answers to the querying may be entered by spectators via the user interface of the interactive device (col. 6, lines 22-29, col. 10, lines 11-21 and lines 53-65); transferring the answers to a central processor (col. 9, lines 49-54); processing said answers into results using said central processor (col. 6, lines 60-65; col. 6, lines 1-15); and announcing said results (col. 9, lines 19-25; col. 15, lines 9-22; col. 16, lines 17-20).

Junkin does not specifically teach that the spectators are present at a live spectator event and participate in contest using a wireless device.

However, the precedent limitation is known in the art of communications. Ruybal teaches audience participation at a live event (col. 4, lines 44-58) audience members can key-in data at appropriate times during an interactive event to respond to questions (col. 7, line 20 to col. 9, line 53). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to implement the live event audience participation technique taught by Ruybal within the system of Junkin in order to allow a plurality of motion picture theater auditoriums to be interactively linked so that so that live, interactive events can be conducted with large theater audiences throughout the theater network (col. 9, lines 47-55).

Regarding claim 8, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches collecting demographic characteristics of at least a portion of said spectators (col. 2, line 53 to col. 3, line 6).

Regarding claims 16, 17, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches relaying informational items, said items being transmitted by said wireless communication system to said wireless interactive device for output using said user output interface (col. 2, lines 26-44 and col. 8, lines 6-64).

Regarding to claims 19-21, 26, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches querying comprises a context or a game or opinion poll (col. 8, lines 6-63 and col. 9, line 37 to col. 10, line 65).

Regarding claims 27, 58, Junkin in view of Ruybal teaches all the limitations above. Junkin further teaches wherein the wireless communications transmits and receives using at least on transmission selected from the group consisting of radio transmissions, microwave transmissions, and satellite transmissions (col. 8, lines 37-44).

Regarding claims 29, 56, Junkin in view of Ruybal teaches all the limitations above. Junkin further teaches wherein said wireless interactive device is Internet-enabled and communicates therewith (col. 2, lines 21-25 and lines 57-59).

Regarding claim 30, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches wherein said user input interface comprises a plurality of keys (col. 4, lines 50-59).

Regarding claim 31, Junkin in view of Ruybal teaches all the limitations above. Junkin further teaches wherein said user input interface comprises at least one member selected from the group consisting of a keypad, selection buttons, a touch screen, a pointing device, a rotatable dial, and a voice recognition system (col. 15, lines 16-19).

Regarding claim 32, Junkin in view of Ruybal teaches all the limitations above. Junkin further teaches wherein said user output interface comprises at least one of an alphanumeric text display, a graphical display, and an audio output means (col. 2, lines 21-25).

Regarding claims 33-36, 39, 40, 51, 52, and 62-65, Junkin in view of Ruybal teaches all the limitations above. Junkin further teaches wherein said querying step is accomplished by at least one display visible to said spectators (col. 2, lines 60-67).

Regarding claims 37, 41, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches wherein said querying step is accomplished by a message transmitted by said wireless communication system to said interactive device and output by said user output interface (col. 8, lines 10-30).

Regarding claim 42, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches the offering of a special-purpose wireless interactive device for sale or rent (col. 9, lines 3-9).

Regarding claim 43, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches wherein said live spectator event comprises multiple activities occurring simultaneously in different locations within a venue (col. 7, lines 46-61 and col. 9, lines 47-51).

Regarding claim 44, Junkin in view of Ruybal inherently teaches all the limitations, given that more than one spectator is present in the system and an exchange connection is also present to permit communications between spectators and the provider.

Regarding claim 54, Junkin in view of Ruybal teaches all the limitations above. Corresponding to the claimed limitation, Ruybal further teaches comprising at least one distributed receiving server in data communication with said central processor and said wireless communications system, and wherein a computer program stored in said receiving server receives said answers and transfers said answers to said central processor (col. 8, lines 10-40).

Regarding claim 57, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches comprising broadcasting informational items appointed for receipt by said wireless interactive device (col. 6, lines 10-14; col. 15, lines 9-22; col. 16, lines 17-20).

Regarding claims 59, 61, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches comprising at least one distributed receiving server in data communication with said central processor and said wireless communications system, and wherein a computer program stored in said receiving server receives said answers and transfers said answers to said central processor (col. 8, lines 10-40).

Regarding claim 60, Junkin in view of Ruybal teaches all the limitations above. Ruybal further teaches wherein a computer program stored in said central processor is

Art Unit: 2681

operative to process into results said answers entered by said spectators (col. 7, line 44 to col. 8, line 9).

Regarding claim 70, Junkin in view of Ruybal teaches all the limitations above. Junkin teaches localization circuitry inherently present in col. 6, lines 10-41.

4. Claims 3-5, 9, 22, 28, 53, 55, 67, 72, and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Junkin, U.S. Patent No. 6,193,610 131 in view of Ruybal, U.S. Patent No. 5,801,754 in view of Von Kohorn, U.S. Patent No. 5,916,024.

Regarding claim 3, Junkin in view of Ruybal teaches all the limitations above except wherein said promotional message is disseminated for monetary consideration from an advertiser.

However, the preceding limitation is known in the art of communications. Von teaches in a broadcast sponsored by several advertisers, a number of sweepstakes prizes are interspersed among the discount or smaller cash prizes awarded to successful audience members (col. 119, lines 31-46). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the techniques of Von within the system of Junkin and Ruybal in order for audience members participating in a live event to receive monetary coupons from advertisers.

Regarding claim 4, Junkin in view of Ruybal teaches all the limitations above except wherein said interactive device transmits indicia identifying said device.

However, the preceding limitation is known in the art of communications. Von teaches the validation signal includes a number for identifying the remote station or user (col. 43, lines 40-54). Therefore, it would have been obvious to one of ordinary skill in



Art Unit: 2681

the art, at the time of the invention, to implement the techniques of Von within the system of Junkin and Ruybal in order to verify individual audience members, and facilitate the distribution of awards.

Regarding claim 5, Junkin in view of Ruybal further in view of Von teaches all the limitations above. Von further teaches said unique signature comprises indicia entered into said wireless interactive devices using the user input interface thereof (col. 24, lines 10-14 and col. 27, line 56 to col. 28, line 14).

Regarding claims 9, 67, Junkin in view of Ruybal teaches all the limitations above except wherein said promotional message is selected based on said demographic characteristics of said participating spectator.

However, the preceding limitation is known in the art of communications. Von teaches the distribution of coupons according to listeners or viewers time zone (relative to spectator location) (col. 31, line 38 to col. 32, line 7). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Von within the system of Junkin in view of Ruybal in order to equitably service viewers of different time zone.

Regarding claims 22, 53, 72, and 73, Junkin in view of Ruybal teaches all the limitations of claim 1 except the step of awarding prizes to at least one selected spectator who has answered the querying.

However, the preceding limitation is very well known in the art of communications. Von teaches a response unit in a wireless device to answer questions broadcasted via satellite wherein acceptable answers are instantly rewarded (col. 119,

Art Unit: 2681

lines 26-50). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to implement the technique of Von within the system of Junkin and Ruybal in order to reward audience members who have been successful in answering right questions.

Regarding claims 28, 55, Junkin in view of Ruybal teaches all the limitations above except wherein said interactive device is a member selected from the group consisting of cellular telephones, two-way pagers, wireless personal digital assistants, and wireless pocket PC's.

However, the preceding limitation is known in the art of communication. Von teaches a subscriber unit can be operative over telephone or other wireless communication (col. 75, lines 52-60, col. 113, lines 15-19). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Von within the system of Junkin and Ruybal in order to provide mobility to audience members participating in a live event.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Junkin, U.S. Patent No. 6,193,610 in view of Ruybal, U.S. Patent No. 5,801,754 in view of Von Kohorn, U.S. Patent No. 5,916,024 and further in view of Brown (US 5,794,219).

Regarding claim 10, Junkin in view of Ruybal further in view of Von teaches all the limitations above except conducting an auction of goods or services, wherein participating spectators submits bids entered using said user input interface.

However, the preceding limitation is known in the art of communications.

Brown teaches conducting auction that permits individual bidders to pool their bids for a desired item (col. 3, lines 30-40). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Brown within the system of Junkin in view of Ruybal further in view of Von in order to display updated bid information in real-time for bidders to views from their remote communication devices.

6. Claims 23, 24, 68, and 69 rejected under 35 U.S.C. 103(a) as being unpatentable over Junkin, U.S. Patent No. 6,193,610 in view of Ruybal, U.S. Patent No. 5,801,754 in view of Von Kohorn, U.S. Patent No. 5,916,024, and further in view of Breen Jr. et al. (US. 6,598,027).

Regarding claims 23, 24, 68, and 69, Junkin in view of Ruybal, further in view of Von Kohorn teaches all limitations above except soliciting a purchase of goods by spectators, entering orders via user interface, transmitting orders and paying the vendor.

However, the preceding limitation is known in the art of communications. Breen Jr. teaches conducting an auction over the network to solicit bids to purchase the regulated goods, the vendor receives information about financial account of the buyer to pay the goods (col. 9, line 16 to col. 10, line 15). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Breen within the system of Junkin in view of Ruybal, further in view of Von Kohorn in order to verify that the buyer is authorized to buy the regulated goods offered for sale.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-5, 8, 9, 16-73 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-52 of U.S. Patent No. 6,760, 595. Although the conflicting claims are not identical, they are not patentably distinct from each other because a method for enabling interactive participation by a plurality of spectators attending a live spectator event, the method comprising the steps of: "providing a system adapted to transmit and receive messages with said interactive device; disseminating at least one promotional message to said spectators through said user output interface of said interactive device; querying said spectators to respond to at least one query with an answer entered through said user input interface and transmitted by said interactive device; receiving answers entered by said spectators; transferring said answers to a central processor; processing said answers into results using said central processor" are present in the patent.

***Allowable Subject Matter***

9. Claims 6, 7, 11-15, 18, 25, 45, and 71 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A Gelin whose telephone number is (703) 305-4847. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R Hudspeth can be reached on (703) 308-4825. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JEAN GELIN  
PRIMARY EXAMINER**

JGelin  
January 7, 2005

